(3)

SUPREME COURT OF THE UNITED STATES

October Term, 1993

No.

Supreme Court, U.S.
FILED

931261 JAN 28 1994

OFFICE OF THE CLERK

Myong Magnuson, d/b/a
Yoshiko's Sauna,

Petitioner,

vs.

City of Minneapolis,

Respondent.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI VOLUME II

Randall D.B. Tigue
Attorney for Petitioner
2620 Nicollet Avenue
Minneapolis, Minnesota 55408
(612) 874-9903

103pp

STATE OF MINNESOTADISTRICT COURT

COUNTY OF HENNEPINFOURTH JUDICIAL DISTRICT

City of Minneapolis, a

municipal corporation,Type Case: Nuisance

Plaintiff, - File No: 92-08094

vs.

Helen Fisher, Un Sil

aka Un Sil Berg, and Myong

Magnuson dba Yoshiko's Sauna,

Defendants.

and

Un Sil Olson and Helen Fisher,

Third-Party Plaintiffs,

vs.

Suzy Woo Kotts,

Third-Party Defendant.

NOTICE OF MOTIONS AND MOTIONS TO DISMISS, DECLARE MINNESOTA STATUTES, SECTIONS 617.80 ET SEQ. UNCONSTITUTIONAL, OR IN THE ALTERNATIVE GRANT DEFENDANT OLSON'S MOTI0N TO OBTAIN RESTITUTION OF 117 NORTH WASHINGTON AVENUE AND EVICT SUZY KOTTS PURSUANT TO MINNESOTA STATUTES SECTION 617.85

To: City of Minneapolis and its attorney, Scott Reeves, A-1700 Government Center, 300 South Sixth Street, Minneapolis, MN 55487; Myong Magnuson and her attorneys Randall Tigue, Esq., 2620 Nicollet Avenue, Minneapolis, MN 55408; and Suzy Kotts and her attorney, Jarrold Hartke, Esq., 820 Southview Boulevard, Suite 100, South St. Paul, MN 55075-2397; Hubert H. Humphrey, III, Attorney General of the State of Minnesota, 102 State Capitol, St. Paul, MN 55155.

NOTICE OF MOTION

PLEASE TAKE NOTICE that Defendants and Third-Party Plaintiffs Fisher and Olson, above-named, through their undersigned attorneys, will bring the following Motions on for hearing before the Honorable Mary Winter, Judge of the above-named Court, at the Hennepin County Government Center, City of Minneapolis, State of Minnesota on the 2nd day of July, 1992 at 1:30 p.m..

MOTIONS

1. Pursuant to Minnesota Rules of Civil Procedure, Rule 12.02(b), Defendants Fisher and Olson move the Court for its order dismissing Plaintiff's Complaint for lack of personal jurisdiction Defendants.

2. Pursuant to Minnesota Rules of Civil Procedure, Rule 12.02(d), Defendants Fisher and Olson move the Court for its order dismissing Plaintiff's Complaint for insufficiency of service of process.

3. Pursuant to Minnesota Rules of Civil Procedure, Rule 12.02(a), Defendants Fisher and Olson move the Court for lack of subject matter jurisdiction.

4. Pursuant to Minnesota Rules of Civil Procedure, Rule 12.02(d), Defendants Fisher and Olson move the Court for its order dismissing Plaintiff's Complaint for failure to state a claim upon which relief can be granted.

5. Pursuant to Minnesota Statutes, Section 617.85 and Rule 115.03, General Rules of Practice, Defendants and Third-Party Plaintiffs alternatively move the Court for its Order compelling Defendant Suzy Kotts to vacate the premises at 117 North Washington Avenue, in the City of Minneapolis, State of Minnesota and surrender the premises to Third-Party Plaintiff Olson.

Said Motions are based upon all files, records and proceedings herein and upon the Memorandum of Law and Affidavits submitted.

DATED: June 15, 1992

PERRY, PERRY & PERRY

By: Stewart R. Perry (#8503)
Shawn M. Perry (#185000)
Shane C. Perry (#203907)
Attorneys for Third-Party
Plaintiff Olson
Norwest Bank Building
Suite 110
900 East Wayzata Boulevard
Wayzata, Minnesota 55391

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

City of Minneapolis, a

municipal corporation, Type Case: Nuisance

Plaintiff, File No: 92-08094

vs.

Helen Fisher, Un Sil Olson

aka Un Sil Berg, and Myong

Magnuson dba Yoshiko's Sauna,

Defendants.

and **AFFIDAVIT OF UN SIL OLSON**

Un Sil Olson and Helen Fisher,

Third-Party Plaintiffs,

vs.

Suzy Woo Kotts,

Third-Party Defendant.

STATE OF MINNESOTA)

)ss

COUNTY OF HENNEPIN)

Affiant, being first duly sworn under oath states as follows:

1. Affiant is Un Sil Olson and makes this affidavit in support of her motions to dismiss or alternatively to evict Suzy Kotts.

2. Affiant began operating Yoshiko's Sauna in 1974 with her partner Helen Fisher. Affiant and Fisher each owned a 50% interest in the business and property.

3. The upper two floors of the property contain residential apartments. The lower floor is leased to Yoshiko's Sauna, a lawful commercial business.

4. Yoshiko's offered saunas and massage from the beginning. Prior to opening Yoshiko's, Affiant obtained the necessary permit from the City.

5. In 1988, Fisher sold her 50% interest in Yoshiko's Sauna and leased her 50% interest in the premises to Myong Magnuson.

6. In 1990, Affiant leased her 50% interest in Yoshiko's Sauna and 50% interest in the premises to Suzy Kotts.

7. Affiant received the notice of conviction relating to Suzy Kotts.

After receipt of the notice, Affiant contacted Kotts and told her that she did not want any trouble. Kotts persuaded Affiant that there would be no more trouble.

8. Affiant did not receive the second notice of conviction for prostitution. Further, Affiant has kept all her notices and papers and upon review of those documents does not find any such notice.

9. The City's Summons, Complaint, and attachments in support of the City's motion for injunction was the first time Affiant had notice of the second conviction.

10. Affiant has not acknowledged service of the Summons and Complaint. These documents were not accompanied by a pre-paid return addressed envelope or any notice of acknowledgment of services.

11. After retaining counsel, Kotts was requested to leave the premises for violation of the terms of her lease agreement.

12. Affiant lives off of the rental income generated by her leases and attends a South High school program for adults to obtain her high school diploma.

FURTHER YOUR AFFIANT SAITH NOT.

_____

Un Sil Olson

Subscribed and sworn to before

me this 15th day of June, 1992.

_____

Notary Public

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

City of Minneapolis, a municipal corporation,

Plaintiff, File No. MX 92-8094

vs. **ORDER**

Helen Fisher, Un Sil Olson, f/k/a Un Sil Berg, and Myong Magnuson and Suzy Kotts d/b/a Yoshiko's Sauna,

Defendants.

The above-entitled matter came before the Honorable Mary Davidson Winter, Judge of District Court, on the 13th day of July, 1992.

Scott Reeves, Assistant Minneapolis City Attorney, appeared as counsel for and on behalf of the Plaintiff. Shane C. Perry, Attorney at Law, appeared as counsel for and on behalf of Defendants Fisher

and Olson. Randall D.B. Tigue, Attorney at Law, appeared as counsel for and on behalf of Defendant Myong Magnuson. Jerrold M. Hartke, Attorney at Law, appeared as counsel for and on behalf of Defendant Suzy Kotts.

THE COURT FINDS:

1. The Plaintiff, City of Minneapolis, seeks a temporary injunction against Yoshiko's Sauna, 117 Washington Avenue North, Minneapolis, under the provisions of Minn. Stats. Sections 617.80 through 617.87.

2. Plaintiff, City of Minneapolis, is a municipal corporation organized under the laws of the State of Minnesota. 3.The property located at 117 Washington Avenue North, Minneapolis, is legally described as:

The Northwesterly 22 feet of Lot 8, Block 55, town of Minneapolis addition.

Defendants Helen Fisher and Un Sil Olson a/k/a Un Sil Berg own this property as tenants in common. Helen Fisher is the taxpayer of record.

4. Myong Magnuson registered the name "Yoshiko's[11] as an unincorporated business trade name with the Minnesota Secretary of State as of March 21, 1991. Myong Magnuson operates Yoshiko's on

Wednesdays, Thursdays, Saturdays, and alternating Sundays pursuant to her lease with Helen Fisher. Suzy Woo Kotts operates Yoshiko's on Mondays, Tuesdays, Fridays, and alternating Sundays pursuant to her lease with Un Sil Olson.

5. Counsel for Defendants argue that since the arrests for prostitution which support the City's motion arose on Tuesdays, that if the Court has authority to issue a temporary injunction, it should only enjoin Kotts' portion of the operation.

6. Counsel for Defendants further argue that the applicable statutes are unconstitutional.

7. Within two years prior to the commencement of this action there have been two criminal convictions for acts of prostitution committed at Yoshiko's Sauna which qualify to establish that the premises are a nuisance as defined in Minn. Stat. S617.81:

(a) Defendant: Suzy W. Kotts

H.C.D.C. File No. 90-089051

Charge: Prostitution (M.S. 609.324, Subd. 3)

Date of Offense: 11-27-90

Date of Conviction: 3-27-91

Notice of Conviction: 4-24-91

Category: Gross Misdemeanor

(b) Defendant: Lola Jean Skenadore a/k/a Ekobena

H.C.D.C. File No. 91-039512

Charge: Prostitution (M.S. 609.324, Subd. 3)

Date of Offense: 6-4-91

Date of Conviction: 9-19-91

Notice of Conviction: 9-23-91

Category: Misdemeanor

8. Notice of the above-described convictions has been mailed by the Hennepin County District Court Administrator to the owners of the building and to interested parties.

9. Since sending the statutory notices to Yoshiko's, there have been two arrests for prostitution, evidencing ongoing unlawful conduct despite the notices.

10. This matter came on for hearing on July 13, 1992 pursuant to an Order to Show Cause continued to that date by agreement of counsel. Each side was given additional time to submit written legal arguments.

CONCLUSIONS OF LAW:

1. The subject property is a "building", as that term is defined in

Minn. Stat. S617.80, Subd. 2.

2. Defendants Fisher and Olson are "owners" as that term is defined in Minn. Stat. S617.80, Subd. 7.

3. Magnuson and Kotts are "interested parties" as defined by Minn. Stat. S617.80, Subd. 8.

4. The operation of Yoshiko's Sauna at 117 Washington Avenue North constitutes a "public nuisance" as defined by Minn. Stat. ~617.80, Subd. 2(1).

5. The Court Administrator filed notice of the prostitution convictions with the Hennepin County Recorder and provided notice of the prostitution convictions to the owners of the property and to interested parties as required by Minnesota Statutes.

Suzy Kotts was in the Workhouse at the time and had gone on record as having renounced prostitution forever. Her interest in the business was not known to the City.

6. Minn. Stats. 617.80 through 617.87 are not unconstitutional.

7. Plaintiff is entitled to entry of a temporary injunction pursuant to Minn. Stat. §617.82.

NOW, THEREFORE, IT IS ORDERED:

1. Plaintiff's motion for a temporary injunction is granted.

Plaintiff is exempted from filing a bond per Minn. Stat. §574.18.

2. Defendants Fisher, Olson, and Magnuson and Suzy Kotts, Third-Party Defendant, are enjoined from the operation of Yoshiko's Sauna at 117 Washington Avenue North, Minneapolis, Minnesota, until further order of the Court.

BY THE COURT:

DATED: September 8, 1992

Judge of District Court

MEMORANDUM OF LAW

Defendants challenge Minn. Stats. §617.80-87 on the grounds that since they were not able to participate in the court cases which resulted in the prostitution convictions which triggered implementation of the public nuisance statute, they have been denied due process of law. This position was argued to the Federal District Court and the Eighth Circuit in Hvamstad v. Suhler, 727 F.Supp. 511 (D. Minn. 1989); 915 F.2d 1218 (8th Cir. 1990) and rejected.

The arguments made by Defendants regarding their rights of association have not been accepted by courts in this jurisdiction or elsewhere and the case law cited is inapplicable to the facts of this case. There is no constitutional protection for an association for business purposes.

Defendants argue that to close the entire operation punishes Magnuson unjustly for the sins of Kotts, since the violations occurred on Kotts' days of the week. This argument exalts form over substance. Kotts and Magnuson are running one business, Yoshiko's, in one physical plant, using the same equipment, telephone, furniture, heat, electricity, and, in some instances, staff.

They cannot be construed as separate. In addition, it is not true

that the behavior in question all occurred under Kotts' control.

Defendants' argument that service was insufficient fails because it would require the City to serve known and unknown owners and parties in interest, an impossible task and not intended by the legislature. The purpose behind service is notice. All players in this game received notice.

The statute is valid, service was proper, Yoshiko's is one business, and a temporary injunction against it should issue.

MDW

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

City of Minneapolis, a municipal corporation.

File No.: 92-08094

Case Type: Injunction

Plaintiff,

vs.

Helen Fisher, Un Sil Olson aka Un Sil Berg, Myong Magnuson, and Suzy Kotts dba Yoshiko's Sauna,

Defendants.

NOTICE OF MOTION AND MOTION FOR FURTHER RELIEF

NOTICE OF MOTION

PLEASE TAKE NOTICE that on October 20, 1992, at 9:00 a.m. in Room C-701 Hennepin County Government Center Plaintiff City of Minneapolis will bring on for hearing the attached Motion for Further Relief before the Honorable Mary D. Winter, Judge of District Court.

MOTION FOR FURTHER RELIEF

Plaintiff City of Minneapolis moves the court for further relief in the form of a more detailed temporary injunction to insure that the Defendants neither operate the business at 117 North Washington Avenue, nor allow others to operate the business, whether under the name Yoshiko's or some other name.

Plaintiff requests that the court:

(1) Issue Plaintiff's original Proposed Order filed with its Motion for Temporary Injunction;

(2) Order Defendants to post a bond conditioned upon compliance with the order;

(3) Order all four Defendants to appear in person before the court within three days to verify compliance with the court's order, and;

(4) Authorize the Minneapolis Police Department to enter the business at 117 North Washington Avenue, remove persons found to be working therein, and secure the premises against further operation.

Dated: October 8, 1992

ROBERT J. ALFTON

City Attorney

by

SCOTT REEVES

Assistant City Attorney

Attorney Reg. No. 90128

Attorneys for Plaintiff

A-1700 Hennepin County

Government Center

300 South Sixth Street

Minneapolis, MN 55487

(612) 673-2066

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

Case Type: Injunction

City of Minneapolis, a

municipal corporation,

FILE NO: 92-08094

Plaintiff,

SECOND

vs. **AFFIDAVIT OF**

THEODORE W. WILSON

Helen Fisher, Un Sil Olson

aka Un Sil Berg, and Myong Magnuson,

and Suzy Kotts dba Yoshiko's Sauna,

Defendants.

____ Theodore W. Wilson, being first duly sworn, deposes and says:

1. I am employed as Court Manager for the Court Administrator,

Fourth Judicial District of Minnesota.

2. I am responsible for mailing notices of conviction to owners and interested parties in nuisance actions under Minnesota Statutes, Section 617.81, subdivision 3.

3. Attached is a certified copy of the Fourth Judicial District Court computer record of the case history of criminal case number 91-091402 regarding a prostitution conviction arising from Yoshiko's Sauna.

4. Attached are true and accurate copies of notices of conviction, and accompanying cover letters, which were mailed at my direction regarding the above-referenced conviction for prostitution occurring at Yoshiko's Sauna, 117 Washington Avenue North, Minneapolis, MN.

5. At my direction, the attached Notices of Conviction were recorded with the Hennepin County Recorder.

_____

THEODORE W. WILSON

Subscribe and sworn to before
me this lst day of June

_____

Notary Public

CASE 3 91091402

MOOS KATHIE LEE (T) GIP # 00407140

3237 5TH AVE S UPPER DOB: 5/12/67

MPLS MN 55407 RACE: 7 SEX: F

DL: MN M266461427361

****

******91071401 BLO DORMANT BAIL 000.00

M SEX CRIMES 12/10/91 DEF: MALOCKO, RICHARD J

MPLS MPLS PROG: HALBERT, GREG

CT PROSTITUTION

12/17/92 17;17 CLERICAL

CT: CITATION/FILED

NO BAIL REQUIRED

01/30/92 07:00 OCM SET: ARR OCCRD: ARR JUDGE WINTER, M

FOUND ELIGIBLE FOR PD/OUT CUSTODY

CT ARRAIGNED

CT PLEAD NOT GUILTY

CT JURY TRIAL DEMANDED

02/26/92 07:30 PRE SET: PRLH OCCRD:

PRLH JUDGE ALTON, A

CT PRE-TRIAL/HELD

CT ARRAIGNED

CT PLEAD NOT GUILTY

CT JURY TRIAL DEMANDED

03/03/92 00:31 CLERICAL

MOTION/FILED

TO SUPPRESS

AFFIDAVIT OF SERVICE FILED BY DEFN

04/02/92 07:15 TRL OCT JTR OCCRD NAPD JUDGE LEVY

BENCH WARRANT ORDERED

BAIL ORDERED $1,000.00

04/02/92 15:00 OATCH SET DATCH OCCRD DATCH

BENCH WARRANT/ISSUED

05/07/92 00:24 CLERICAL

BENCH WARRANT RETURNED

05/07/92 07:00 TCR SET: APPDW OCCRD: PL JUDGE OLEISKY

FOUND ELIGIBLE FOR PD/IN CUSTODY

PD E. ROGEN APPEARING

CT ARRAIGNED

CT PLEAD GUILTY

CT SENTENCED

FINE OF $25.00

AND SERVE 10 DAYS AT ADF

10 DAYS AND TIME STAYED FOR 001 YEARS

$2.50 SURCHARGE

05/07/92 BATCH SET: BATCH ORDERED: BATCH

CT COMPUTER GENERATED FEES TAXED $5.00

STATE OF MINNESOTA

DISTRICT COURT OF MINNESOTA

FOURTH JUDICIAL DISTRICT

May 26, 1992

Suzy Kotts

5504 Candy Cove Trail

Prior Lake, MN 55372

Dear Ms. Kotts:

As an interested party in the property located at 117 Washington Avenue North, First Floor, Minneapolis, MN 55401, please find attached a Notice of Conviction pursuant to Minnesota Statute 617.81, Subdivision 3.

Sincerely,

Theodore W. Wilson

Court Manager

Enclosure

STATE OF MINNESOTA

DISTRICT COURT OF MINNESOTA

FOURTH JUDICIAL DISTRICT

May 26, 1992

Occupants

117 Washington Avenue N.

First Floor

Minneapolis, MN 55401

Dear Occupants:

As interested parties in the property located at 117 Washington Avenue North, First Floor, Minneapolis, MN 55401, please find attached a Notice of Conviction pursuant to Minnesota Statute 617.81, Subdivision 3.

Sincerely,

Theodore W. Wilson

Court Manager

Enclosure

STATE OF MINNESOTA

DISTRICT COURT OF MINNESOTA

FOURTH JUDICIAL DISTRICT

May 26, 1992

Helen C. Fisher

6521 Nordic Drive

Edina, MN 55435

Dear Ms. Fisher:

As an interested party in the property located at 117 Washington Avenue North, First Floor, Minneapolis, MN 55401, please find attached a Notice of Conviction pursuant to Minnesota Statute 617.81, Subdivision 3.

Sincerely,

Theodore W. Wilson

Court Manager

Enclosure

STATE OF MINNESOTA

COUNTY OF HENNEPIN

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

FIRST DIVISION, MINNEAPOLIS

Criminal File Number: 91091402

NOTICE OF CONVICTION

PURSUANT TO MINNESOTA STATUTE

617.81, SUBDIVISION 3

TO:

Helen C. Fisher
6521 Nordic Drive
Edina, MN 55435

Un Sil Olson
6400 Barrie Road #1410
Edina, MN 55435

Myong Magnuson
117 Washington Ave.
First Floor
Minneapolis, MN 55401

Suzy Kotts
5504 Candy Cove Trail
Prior Lake, MN 55372

Business Owner	Occupants
Yoshiko's Sauna	117 Washington Ave. N.
117 Washington Ave. N.	First Floor
First Floor	Minneapolis, MN 55401
Minneapolis, MN 55401	

RE: Notice of Conviction, Criminal File No. 91091402 State of Minnesota, Fourth Judicial District

You are hereby notified pursuant to Minnesota Statute 617.81, Subdivision 3, that Kathie Lee Moos was convicted on May 7, 1992 of an offense described in Minnesota Statute 617.81, Subdivision 2, relating to public nuisances, to-wit, Prostitution, which occurred at Yoshiko's Sauna, 117 Washington Avenue North, Minneapolis, MN 55401, which address has the legal description of "Town of Minneapolis Addition, Lot 8, Block 55, Nwly 22 feet" and Property Identification Number 22-029-24-410066.

You are also hereby notified that three misdemeanor convictions for such an offense, or two convictions at least one of which is a felony or gross misdemeanor, within a two year period, for conduct occurring at Yoshiko's Sauna, 117 Washington Avenue North,

Minneapolis, MN 55401 could result in the premises being declared a public nuisance. Under Minnesota Statutes 617.80 through 617.87, the District Court may prohibit the operation of a public nuisance, order the premises closed for up to one year and order other relief as appropriate.

Under Minnesota Statute 617.81, Subdivision 3, this notice will be filed with the County Recorder.

Jack M. Provo, Administrator

Fourth Judicial District

Date: May 20, 1992

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

City of Minneapolis, a municipal corporation.

Plaintiff,

vs.

Helen Fisher, Un Sil Olson aka Un Sil Berg, Myong Magnuson, and Suzy Kotts dba Yoshiko's Sauna,

Defendants.

File No.: 92-08094

Case Type: Injunction

THIRD AFFIDAVIT OF EDWARD T. CONROY

_____ Edward T. Conroy, being first duly sworn, deposes and says:

1 I am a lieutenant in the Minneapolis police Department and the supervisor of the Vice Unit.

2. Since the court order in this case dated September 8, 1992, the Vice Unit has periodically checked yoshiko's Sauna to verify compliance with the order. On September 18, 1992, September 22, 1992, and October 2, 1992, vice officers posing as customers have

entered Yoshiko's and observed that the establishment is open and doing business as usual. Attached are copies of memoranda generated by the Vice Unit concerning the incidents referred to above.

3 Vice officers have also observed that Yoshiko's is displaying a sign identifying the business by a different name. However, nothing has changed in its operation. It therefore appears that the owners and operators of the business are attempting to evade the court order by changing the name of the business.

4. On September 24, 1992, another conviction for prostitution occurring in Yoshiko's Sauna was obtained after a jury trial. The details are as follows:

Defendant: Frances Tamel Brown

Court File No.: 92-023758

Date of Offense: 3/19/92

Date of Conviction: 9/24/92 Charge:

Prostitution Sentence: 90 days stayed 1 year.

Subscribed and sworn to

before me this 8th day _____

of October, 1992. Edward T. Conroy

_____

Notary Public

My commission expires:

INTEROFFICE COMMUNICATION

MINNEAPOLIS POLICE DEPARTMENT

Date: October 5th,1992

To: Scott Reeves, Assistant City Attorney

From: Lt. Conroy, Vice Unit

Subject: Yoshiko's Sauna, 117 No. Washington

On 10/2/92 at 2100 hours, officer Von Lehe entered above sauna and rang the bell. About 2 minutes later he was met by an Asian female who opened the door and asked him "would you like a massage". Officer Von Lehe looked at the prices on the wall which said Massage $40.00 + $3.00 tax, Exchange $50.00 + $3.50 tax. Officer Von Lehe told her he had to get more money and left.

INTEROFFICE COMMUNICATION

MINNEAPOLIS POLICE DEPARTMENT

Date: September 23rd, 1992

To: Scott Reeves, Assistant City Attorney

From: Lt. Conroy, Vice Unit

Subject: Yoshiko's Sauna, 117 No. Washington

On 9/22/92 at 0035 hours, officer Von Lehe of the Vice Unit entered Yoshiko's Sauna. He was met by an Asian female and was asked if he wanted a massage. She quoted prices as $40.00 and $50.00. Officer Von Lehe told her he didn't have enough money and left.

INTEROFFICE COMMUNICATION

MINNEAPOLIS POLICE DEPARTMENT

Date: September l8th, 1992

To: Scott Reeves, Assistant City Attorney

From: Sgt. Jacobson, Vice Unit

Subject: Yoshiko's Sauna, 117 No. Washington

In response to your request that we check the above business to see if they were still open and operating, we entered the business on 12/18/92 at 0005 hours. A white blond female let me in and stated a massage was $40.00 and for $50.00 I could massage her. I then left the business.

This is to inform you that Yoshiko's sauna is in fact open for business.

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

City of Minneapolis, a municipal corporation,

File No.: 92-08094

Case Type:Injunction

Plaintiff,

vs.

Helen Fisher, Un Sil Olson aka Un Sil Berg, Myong Magnuson, and Suzy Kotts dba Yoshiko's Sauna,

Defendants.

THIRD AFFIDAVIT OF THEODORE W. WILSON

WILSON

Theodore W. Wilson, being first duly sworn, deposes and says:

1. I am employed as Court Manager for the Court Administrator, Fourth Judicial District of Minnesota.

2. I am responsible for mailing notices of conviction to owners and interested parties in nuisance actions under Minnesota Statutes, Section 617.81, subdivision 3.

3. Attached is a certified copy of the Fourth Judicial District Court

computer record of the case history of criminal case number 92-023758 regarding a prostitution conviction arising from Yoshiko's Sauna.

4. Attached are true and accurate copies of notices of conviction, and accompanying cover letters, which were mailed at my direction regarding the above-referenced conviction for prostitution occurring at Yoshiko's Sauna, 117 Washington Avenue North, Minneapolis, MN.

5. At my direction, the attached Notices of Conviction were recorded with the Hennepin County Recorder.

Subscribed and sworn to before me this 19th day of November, 1992.

_____

Notary Public _____

THEODORE W. WILSON

DATE/TIME PREPARED:

HENNEPIN COUNTY CRIMINAL COURTS

CASE HISTORY

10/20/92 15:34

CASE # 92023758

BROWN, FRANCES TAMEL (T) SIP# 00499770

4525 4TH ST S DOB: 11/29/64

MINNEAPOLIS MN 55409 RACE: SEX: F

DL: MN B650261785911

****

92023758 NBR DORMANT BAIL:

M SEX CRIMES 03/19/92 DEF: TIGUE, RANDALL

MPLS PROS: KUZNIK, TONY

CT 01 PROSTITUTION S609.32483

CT 01 PROSTITUTION S609.32483(1)

3/25/92 11:01 CLERICAL

CT 01: CITATION/FILED

: NO BAIL REQUIRED FOR 3/25/2

05/06/92 09:00 OCM SET: ARR OCCRD:

ARR JUDGE ADZICK, G

: DOC/CERT. OF REPRESENTATION FILED

: WAIVER OF APPEARANCE FILED

ALL CT : COMPLAINT/DEMANDED

05/19/92 09:51 CLERICAL

CT 01: COMPLAINT/AMENDED FILED FOR 05/12/92

: SERVE COMPLAINT TO DEFT IN COURTROOM

06/05/92: 1400 ocm SET: RTCP OCCRD: RTCP JUDGE

ADZICK, G

ALL CT: ARRAIGNED

ALL CT: PLEAD NOT GUILTY

ALL CT: JURY TRIAL DEMANDED

07/13/92 09:30 PREC SET: PRLM OCCRD: PRLM JUDGE RICE

NOTICE/7.01/STATE REG DSCLOER FILED

ALL COURT: PRE-TRIAL HELD

09/16/92 14:40 SET: CLER OCCRD: CLER

ATTORNEY PICKED UP 2 SUBPOENAS FOR COURT

9/22/92 09:15 TRL SET: JTR. OCCRD: JTRIN JUDGE

CHRISTENSEN, W

JURY SELECTION IN PROGRESS

9-23-92 JTRIN 1953 JG CHRISTENSEN

09/22/92 10:07 CLERICAL

NOTICE/TO REMOVE JUDGE FILED/DEFN

ON JG KALINA BY DEFS ATTY TIGUE

CASE REASSIGNED TO JG CHRISTENSEN BY

JG LEVY

09/23/92 09:30 TRL SET: JTRIN OCCRD: JTRIN JUDGE

CHRISTENSEN, W

TESTIMONY COMPLETED

9-24-92 JTRIN 1953 JG CHRISTENSEN

09/24/92 09:30 TRL SET: JTRIN OCCRD: JTR JUDGE

CHRISTENSEN, W

CT 01: JURY TRIAL HELD

CT 01: FOUND GUILTY BY JURY

ORDERED/PRE-SENTENCE INVESTIGATION

VERDICT FORM FILED

JURY LIST FILED

09/25/92 09:30 TRL SET: FIND OCCRD: CANC

STRICKEN-VERDICT REACHED 09-24-92

09/25/92 23:59 BATCH SET: BATCH OCCRD: BATCH

CT 01: COMPUTER GENERATED FEES TAXED $15.00

10/01/92 09:00 SET: SENT OCCRD: SENT JUDGE

CHRISTENSEN, W.

CT 01: SENTENCED:

DATE/TIME PREPARED:

HENNEPIN COUNTY CRIMINAL COURTS

CASE HISTORY

10/20/92 15:34

CASE # 92023758

BROWN, FRANCES TAMEL (T) SIP# 00499770

4525 4TH ST S DOB: 11/29/64

MINNEAPOLIS MN 55409 RACE: SEX: F

DL: MN B650261785911

****

FINE OF $700.00 OR SERVE 11 DAYS AT ACF

DUE 11/02/92

$500.00 STAYED FOR 2 YEARS

AND SERVE 90 DAYS AT ACF

90 DAYS AND TIME STAYED FOR 002 YEARS

THERE ARE CONDITIONS ON THE WHOLE SENTENCE

K: SEE COMMENT DUE 12/30/92

PRICE COUNSELING COMPLETE

K: PROBATION/FOLLOW RECOMMENDATIONS DUE

10/01/94

K: NO PROSTITUTION OR RELATED CHARGES DUE 10/01/94

K: PAYMENT OF LAW LIBRARY FFEE $2.00

DUE 11/02/93

PAY $20.00 SURCHARGE DUE 11/02/93

REFERRED TO PROBATION

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

FIRST DIVISION, MINNEAPOLIS

Criminal File Number: 92023758

NOTICE OF CONVICTION

PURSUANT TO MINNESOTA STATUTE

617.81, Subdivision 3

Helen C. Fisher	Un Sil Olson
6521 Nordic Drive	6400 Barrie Road #1410
Edina, MN 55435	Edina, MN 55435
Myong Magnuson	Suzy Kotts
117 Washington Ave. N.	5504 Candy Cove Trail
First Floor	Prior Lake, MN 55372
Minneapolis, MN 55401	Business

Yoshiko's Sauna	117 Washington Ave. N.
117 Washington Ave. N.	First Floor
First Floor	Minneapolis, MN 55401
Minneapolis, MN 55401	

BEST AVAILABLE COPY

RE: Notice of Conviction, Criminal File No. 92023758 State of Minnesota, Fourth Judicial District

You are hereby notified pursuant to Minnesota Statute 617.81, Subdivision 3, that Frances Tamel Brown was convicted on September 24, 1992 of an offense described in Minnesota Statute 617.81, Subdivision 2, relating to public nuisances, to-wit, Prostitution, which occurred at Yoshiko's Sauna, 117 Washington Avenue North, Minneapolis, MN 55401, which address has the legal description of "Town of Minneapolis Addition, Lot 8, Block 55, Nwly 22 feet" and Property Identification Number 22-029-24-410066.

You are also hereby notified that three misdemeanor convictions for such an offense, or two convictions at least one of which is a felony or gross misdemeanor, within a two year period, for conduct occurring at Yoshiko's Sauna, 117 Washington Avenue North, Minneapolis, MN 55401 could result in the premises being declared a public nuisance. Under Minnesota Statutes 617.80 through 617.87, the District Court may prohibit the operation of a public nuisance, order the premises closed for up to one year and order other relief as appropriate.

Under Minnesota Statute 617.81, Subdivision 3, this notice will be

filed with the County Recorder

Jack M. Provo, Administrator

Fourth Judicial District Court

Date: September 28, 1992

STATE OF MINNESOTA

DISTRICT COURT OF MINNESOTA

FOURTH JUDICIAL DISTRICT

September 28, 1992

Helen C. Fisher

6521 Nordic Drive

Edina, MN 55435

Dear Ms. Fisher:

As an interested party in the property located at 117 Washington Avenue North, First Floor, Minneapolis, MN 55401, please find attached a Notice of Conviction pursuant to Minnesota Statute 617.81, Subdivision 3.

Sincerely,

Theodore W. Wilson

Court Manager

Enclosure

STATE OF MINNESOTA

DISTRICT COURT OF MINNESOTA

FOURTH JUDICIAL DISTRICT

September 28, 1992

Un Sil Olson

6400 Barrie Road

#1410

Edina, MN 55435

Dear Ms. Olson:

As an interested party in the property located at 117 Washington Avenue North, First Floor, Minneapolis, MN 55401, please find attached a Notice of Conviction pursuant to Minnesota Statute 617.81, Subdivision 3.

Sincerely,

Theodore W. Wilson,

Court Manager

Enclosure

STATE OF MINNESOTA

DISTRICT COURT OF MINNESOTA

FOURTH JUDICIAL DISTRICT

September 28, 1992

Myong Magnuson

117 Washington Avenue North

First Floor

Minneapolis, MN 55401

Dear Ms. Magnuson:

As an interested party in the property located at 117 Washington Avenue North, rirst Floor, Minneapolis, MN 55401, please find attached a Notice of Conviction pursuant to Minnesota Statute 617.81, Subdivision 3.

Sincerely,

Theodore W. Wilson

Court Manager

Enclosure

STATE OF MINNESOTA

DISTRICT COURT OF MINNESOTA

FOURTH JUDICIAL DISTRICT

September 28, 1992

Suzy Kotts

5504 Candy Cove Trail

Prior Lake, MN 55372

Dear Ms. Kotts:

As an interested party in the property located - at 117 Washington Avenue North, First Floor, Minneapolis, MN 55401, please find attached a Notice of Conviction pursuant to Minnesota Statute 617.81, Subdivision 3.

Sincerely,

Theodore W. Wilson

Court Manager

Enclosure

STATE OF MINNESOTA

DISTRICT COURT OF MINNESOTA

FOURTH JUDICIAL DISTRICT

September 28, 1992

Occupants

117 Washington Avenue North

First Floor

Minneapolis, MN 55401

Dear Occupants:

As interested parties in the property located at 117 Washington Avenue North, First Floor, Minneapolis, MN 55401, please find attached a Notice of Conviction pursuant to Minnesota Statute 617.81, Subdivision 3.

Sincerely,

Theodore W. Wilson

Court Manager

Enclosure

STATE OF MINNESOTA

DISTRICT COURT OF MINNESOTA

FOURTH JUDICIAL DISTRICT

September 28, 1992

Business Owner

Yoshiko's Sauna

117 Washington Avenue North

First Floor

Minneapolis, MN 55401

Dear Business Owner:

As an interested party in the property located at 117 Washington Avenue North, First Floor, Minneapolis, MN 55401, please find attached a Notice of Conviction pursuant to Minnesota Statute 617.81, Subdivision 3.

Sincerely,

Theodore W. Wilson

Court Manager

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

City of Minneapolis,

a municipal corporation,

Plaintiff, File No. MX 92-8094

vs. **ORDER**

Helen Fisher, Un Sil Olson,

f/k/a Un Sil Berg, and

Myong Magnuson and Suzy Kotts

d/b/a Yoshiko's Sauna,

Defendants.

The above-entitled matter came before the Honorable Mary Davidson Winter, Judge of District Court, on the 20th day of October, 1992, pursuant to the City's motion.

Scott Reeves, Assistant Minneapolis City Attorney, appeared as counsel for and on behalf of the plaintiff. Shane C. Perry, Attorney at Law, appeared as counsel for and on behalf of Defendants Fisher and Olson. Randall D.B. Tigue, Attorney at Law, appeared as counsel for

and on behalf of Defendant Myong Magnuson. Jerrold M. Hartke, Attorney at Law, appeared as counsel for and on behalf of Defendant Suzy Kotts.

THE COURT FINDS:

1. Defendant Un Sil Olson brought a motion to have Suzy Kotts evicted from the premises at 117 North Washington Avenue, Minneapolis, in June 1992. When the Court ruled on the motions before it, it did not specifically address this motion.

2. The Court has found that the lessee, Suzy Kotts, has maintained a nuisance at the premises (Court's Order dated September 8, 1992).3.

3. Pursuant to Minn. Stat. Section 617.85, the Court is directed to cancel Suzy Kott's lease and restore the premises to Un Sil Olson.

4. Eviction of Suzy Kotts and restoration of her interest in the premises to Un Sil Olson does not affect the status of the Temporary injunction, inasmuch as Suzy Kott's lease is for Mondays, Tuesdays, Fridays, and alternating Sundays, and Myong Magnuson's lease to operate Yoshiko's Sauna is for Wednesdays, Thursdays, Saturdays, and alternating Sundays.

5. Since issuance of the Temporary injunction, a new business has opened at 117 North Washington, Minneapolis, called "M's Health

Club", which appears to be the same business under a new name. This is almost as disengenuous as the division-of-the-week leases discussed in this Court's Order of September 8, 1992. The Minneapolis police Department has not yet produced evidence of the behaviors which resulted in the issuance of the Temporary injunction, so the City's motion must be denied.

6. There is some indication the parties wish to stipulate to the issuance of a permanent injunction. if so, they should proceed to do so, and submit their stipulation to the Court.

NOW, THEREFORE, IT IS ORDERED:

1. Un Sil Olson is awarded restitution of her interest in the premises at 117 North Washington Avenue, Minneapolis, and Suzy Kotts is ordered to vacate immediately upon receipt of this Order.

2. The City's motions for modification of the Temporary Injunction are denied.

3. The Court's Order of September 8, 1992 remains in full force and effect.

4. Copies of this Order shall be mailed to counsel who shall see that their clients are properly served.

BY THE COURT:

MARY DAVIDISON WINTER

Judge of District Court

DATED: October 28, 1992

DISTRICT COURT

STATE OF MINNESOTA

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

CITY OF MINNEAPOLIS,

A MUNICIPAL CORPORATION,

Plaintiff,

vs.

HELEN FISHER, UN SIL OLSON, A/K/A UN SIL BERG, MYONG MAGNUSON, AND SUZY KOTTS, D/B/A YOSHIKO'S SAUNA,

Defendants.

ORDER

File No. MX 92-8094

The above-entitled matter came before the Honorable Mary Davidson (Winter) , Judge of District Court, on the 8th day of January, 1993, pursuant to Plaintiff City of Minneapolis' Complaint for permanent injunction and Order of Abatement.

SCOTT REEVES, Assistant Minneapolis City Attorney, appeared as counsel for and on behalf of the Plaintiff. SHANE PERRY, Attorney at Law, appeared as counsel for and on behalf of

Defendants Helen Fisher and Un Sil Olson. RANDALL D.B. TIGUE, Attorney at Law, appeared as counsel for and on behalf of Defendant Myong Magnuson. JERROLD M. HARTKE, Attorney at Law, appeared as counsel for and on behalf of Defendant Suzy Kotts.

The parties stipulated that all previously submitted affidavits, and attached exhibits, would be admitted in evidence. Additional evidence was submitted by testimony from Defendants Helen Fisher and Suzy Kotts, and by affidavit. Based on the evidence and the arguments of counsel, the Court makes the following:

FINDINGS OF FACT:

1. Plaintiff City of Minneapolis is a municipal corporation organized under the laws of the State of Minnesota.

2. The property located at 117 Washington Avenue North, Minneapolis, is legally described as:

The Northwestern 22 feet of Lot 8, Block 55, Town of Minneapolis Addition.

3. The property located at 117 Washington Avenue North, Minneapolis, is owned by Defendants Helen Fisher and Un Sil Olson as tenants in common. Helen Fisher is the person in whose name the property is recorded with the County Auditor for taxation

purposes, and therefore the "owner" of the property for purposes of Minnesota Statutes, Section 617.80, Subd. 7.

4. At all times relevant to this action, the building at 117 Washington Avenue North contained a business known as Yoshiko's Sauna. Defendant Myong Magnuson registered the name "Yoshiko's" as an unincorporated business trade name with the Minnesota Secretary of State as of March 21, 1991. Magnuson operated Yoshiko's on Wednesdays, Thursdays, Saturdays, and alternating Sundays pursuant to her lease with Helen Fisher. Suzy Woo Kotts operated Yoshikos on Mondays, Tuesdays, Fridays, and alternating Sundays pursuant to her lease with Un Sil Olson. However, the leases speak only to an undivided one-half interest and do not contain the specific time division apparently worked out by the lessees.

5. The portion of the building at 117 Washington Avenue North involved in this action is a commercial structure maintained for business activities involving human occupation, and therefore a "building" as defined in Minnesota Statutes, Section 617.80, Subd. 2.

6. Within the previous two years there have been four criminal convictions for acts of prostitution committed at 117 Washington Avenue North which qualify to establish that the premises are a

nuisance as defined in Minnesota Statutes Section 617.80. These prostitution convictions are:

a. Defendant: Suzy W. Kotts

H.C.D.C. File No. 90-089051

Charge: Prostitution (M.S. 609.324, Subd. 3)

Date of Offense: 11-27-90

Date of Conviction: 3-27-91

Notice of Conviction: 4-24-91

Category: Gross Misdemeanor

b. Defendant: Lola Jean Skenadore a/k/a Ekobena

H.C.D.C. File No. 91-039512

Charge: Prostitution (M.S. 609.324, Subd. 3)

Date of Offense: 6-4-91

Date of Conviction: 9-19-91

Notice of Conviction: 9-23-91

Category: Misdemeanor

c. Defendant: Kathie Lee Moos

H.C.D.C. File No. 91-091402

Charge: Prostitution (M.S. 609.324, Subd. 3)

Date of Offense: 12-10-91

Date of Conviction: 5-7-92

Notice of Conviction Mailed: 5-26-92

Category: Misdemeanor

d. Defendant: Frances Tamel Brown

H.C.D.C. File No. 92-023758

Charge: Prostitution (M.S. 609.324, Subd. 3)

Date of Offense: 3-19-92

Date of Conviction: 9-24-92

Notice of Conviction Mailed: 9-28-92

Category: Misdemeanor.

The first two convictions had been obtained when this action was commenced. The second two were pending.

7. Notices of the aforementioned convictions have been mailed by the Hennepin County District Court Administrator to the owners of the property and to interested parties as defined in Minnesota Statutes, Section 617.80, Subd. 8, and have been recorded against the property with the Hennepin County Recorder.

8. Neither Defendant Fisher nor Defendant Olson (Berg) took remedial action when notified of convictions "a" and "b" above. Only when the City of Minneapolis sought an injunction against the

operation of Yoshiko's Sauna was an eviction of Defendant Kotts pursued.

9 It is clear from the actions of the Defendants that only a permanent injunction expressed as broadly as permitted by Minn. Stat. 617.83 will prevent the use of the premises for sexually oriented services.

10. The testimony presented at this hearing did not produce any new information which would change the court's reasoning in its memo of September 8, 1992.

CONCLUSIONS OF LAW:

1. The subject property is a "building" as that term is defined in Minn. Stat. 617.80, Subd. 2.

2. Defendants Fisher and Olson are "owners" as that term is defined in Minn. Stat. 617.80, Subd. 7.

3. Defendants Magnuson and Kotts are "interested parties" as defined by Minn. Stat. 617.80, Subd. 8.

4. The operation of Yoshiko's Sauna at 117 Washington Avenue North constitutes a "public nuisance" as defined by Minn. Stat. 617.80, Subd 2(1).

5. Notices of all convictions were properly mailed by the District

Court Administrator to owners and interested parties, and were subsequently filed with the Hennepin County Recorder's Office in compliance with Minnesota Statutes Section 617.81, Subd. 3.

6. Issuance of a permanent injunction in this case does not violate Defendants' constitutional rights. See Hvamstad v. Suhler, 915 F.2d 1218 (8th Cir. 1990).

ORDER FOR INJUNCTION

AND ORDER OF ABATEMENT:

1. A public nuisance exists in the building located at 117 Washington Avenue North in the City of Minneapolis, Hennepin County, Minnesota.

2. Defendants Helen Fisher, Un Sil Olson, Myong Magnuson, and Suzy Kotts, and their agents and representatives and all persons in active concert or participation with Fisher, Olson, Magnuson, and Kotts are hereby permanently enjoined and prohibited from operating, leasing to, or allowing any other person to operate Yoshiko's Sauna in the building at 117 Washington Avenue North in the City of Minneapolis, Hennepin County, Minnesota.

3. Defendants Helen Fisher, Un Sil Olson, Myong Magnuson, and Suzy Kotts, and their agents and representatives and all persons in

active concert or participation with Fisher, Olson, Magnuson, and Kotts are permanently enjoined and prohibited from operating, or allowing the operation of, any other sauna, massage parlor, rap parlor, escort service, modeling service, outcall service, or similar business offering sexually oriented services, in the building located at 117 Washington Avenue North in the City of Minneapolis, Hennepin County, Minnesota.

4. Defendants Helen Fisher, Un Sil Olson, Myong Magnuson, and Suzy Kotts are permanently enjoined and prohibited from allowing any other person to offer massage, sauna, modeling, escort, outcall or other sexually oriented services in the building located at 117 Washington Avenue North in the City of Minneapolis, Hennepin County, Minnesota.

5. That the portion of the building at 117 Washington Avenue North which contains or contained Yoshiko's Sauna shall be closed for a period of one year from the date of this Order. Defendants shall remove all movable property from the premises. Defendants shall remove, paint over, and otherwise mask all signs identifying the business therein. Defendants shall give plaintiff and its authorized representatives reasonable access to the interior of the premises to

verify compliance with the terms and conditions of this Order.

6. That this injunction shall be in full force and effect from the date of this Order and shall remain in effect until further order of this Court.

BY THE COURT:

_____

MARY DAVIDSON (WINTER)

Judge of District Court

DATED: February 24, 1993

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT

City of Minneapolis,

a municipal corporation,

Plaintiff, **NOTICE OF APPEAL**

TO COURT OF APPEALS

vs.

Helen Fisher, Un Sil Olson, Trial Court Case No. MX-92-8094

aka Un Sil Berg, and Myong

Magnuson, dba Yoshiko's Sauna, Date of Order: 2/24/93

Defendants. Notice of Filing Served March 8, 1993.

TO:

Clerk of Appellate Courts

Minnesota Judicial Center

25 Constitution Avenue

St. Paul, Minnesota 55155

PLEASE TAKE NOTICE that Defendant Myong Magnuson, by

the undersigned, appeals to the Court of Appeals to the State of Minnesota from the order for abatement and permanent injunction filed and dated February 24, 1993, granting Plaintiffs' Motions for permanent injunction and abatement. Written notice of filing was served by mail on March 8, 1993.

Attorney for Plaintiff:

Scott Reeves

Assistant City Attorney

A-1700 Hennepin County Government Center

300 South 6th Street

Minneapolis, MN 55487

(612) 673-2066

Attorney for Defendants

Helen Fisher and

Un Sil Olson:

Shane C. Perry

Norwest Bank Building

Suite 110

900 East Wayzata Boulevard

Wayzata, Minnesota 55391

(612) 473-0130

Attorney for Defendant

Suzie Kotts:

Jerrold M. Hartke

820 Southview Boulevard

Suite 100

South St. Paul, Minnesota 55075

(612(451-2233

Randall D.B. Tigue, Att. Id. No. 110000

Attorney for Defendant Myong Magnuson

2620 Nicollet Avenue

Dated: March 23, 1993 (612) 874-9903

STATE OF MINNESOTA

IN COURT OF APPEALS

C1-93-637

C3-93-655

Hennepin County

District Court File 928094 Parker, Judge

City of Minneapolis,

Respondent,

Hubert H. Humphrey, III,

Attorney General,

State of Minnesota,

Respondent

vs.

Helen Fisher, et al.,

Appellants (C1-93-637),

Respondents (C3-93-655),

Myong Magnuson, d/b/a

Yoshiko's Sauna,

Respondent (C1-93-637),

Appellant (C3-93-655),

Suzy Kotts, d/b/a

Yoshiko's Sauna,

Respondent.

Robert J. Alfton

Minneapolis City Attorney

Richard Scott Reeves

Assistant City Attorney

333 South Seventh St., Suite 300

Minneapolis, MN 55402-2453

Jocelyn F. Olson

Assistant Attorney General

525 Park Street, Suite 200

St. Paul, MN 55103

Stewart R. Perry

Shane C. Perry

Perry, Perry & Perry

110 Norwest Bank Building

900 East Wayzata Boulevard

Wayzata, MN 55391

Randall D. B. Tigue

Nicollet Avenue Prof. Bldg.

2620 Nicollet Avenue

Minneapolis, MN 55408

Jerrold M. Hartke

820 Southview Blvd.,

Suite 100

South St. Paul, MN 55075-2397

Filed August 10, 1993

Office of Appellate Courts

SYLLABUS

1. Minnesota's Public Nuisance Law does not, on its face, violate constitutionally protected due process and associational rights.

2. As applied, Minnesota's Public Nuisance Thaw does not violate appellants' due process and associational rights.

3. The trial court's abatement order does not constitute a taking such as to require just compensation under the constitution.

4. The evidence is sufficient to support the trial court's decision that appellants' property constituted a public nuisance.

5. The trial court's order does not unreasonably restrict appellants' use of their property.

Affirmed.

Considered and decided by Parker, Presiding Judge, Lansing, Judge, and Short, Judge.

OPINION

PARKER, Judge

Appellants challenge the constitutionality of Minnesota's Public Nuisance Law, alleging various violations of constitutional protections. Appellants also contend there was insufficient evidence to support the trial court's determination that their building is a public nuisance, and

allege they are entitled to relief from the trial court's abatement order because they evicted the offending tenant prior to its issuance. Finally, appellants claim the trial court's permanent injunction against future operation of sexually oriented businesses unreasonably restricts their use of the property. We affirm.

FACTS

Appellants Helen Fisher and Un Sil Olson, tenants in common, each own an undivided one-half interest in the property and the building located at 117 Washington Avenue North in Minneapolis. Before commencement of this action, the building contained both residential apartments and a commercial business known as Yoshiko's Sauna. Originally, Fisher and Olson operated Yoshiko's Sauna, each owning 50 percent of the business. Fisher later agreed to sell her interest in the business and its supplies to appellant Myong Magnuson. Fisher leased a portion of the premises to Magnuson. Olson leased her 50 percent interest in the premises and business to appellant Suzy Woo Kotts.

Magnuson and Kotts operated Yoshiko's on alternating days of the week. Although this was a mutually agreed-upon arrangement, the leases do not specify any division as to the use of the property

between Magnuson and Kotts. Under the leases, both Magnuson and Kotts have an undivided one-half interest in the equipment, furniture, and personal property.

The trial court found Kotts and Magnuson operated Yoshiko's Sauna as a single business entity, on the following evidence: Yoshiko's had only one published telephone number and advertised only as Yoshiko's Sauna; Yoshiko's employees never identified themselves as agents of separate businesses and there was no variation in Yoshiko's business hours; sauna employees wore low-cut swimsuits or provocative lingerie regardless of who was operating the sauna; and the same or similar services were offered at the same prices. During arrests made on both Magnuson's and Kotts' "days," Yoshiko's employees told undercover agents a basic massage cost $40 and an "exchange" massage, in which the customer gives a massage to the masseuse, cost $50.

Based on two prostitution convictions, one of which was a gross misdemeanor, the City of Minneapolis brought an action against Fisher, Olson, Magnuson and Kotts, seeking a temporary and permanent injunction and an order of abatement pursuant to Minnesota's Public Nuisance Law, Minn. Stat. §§ 617.80-87 (1992) . Notices

of the first two prostitution convictions were mailed by the district court administrator to the owners and interested parties as required by Minn. Stat. § 617.81.

After the City of Minneapolis began this action, there were two additional convictions for prostitution at Yoshiko's Sauna. Notices of these convictions were also sent to the relevant parties. All notices of conviction were mailed shortly after the date of conviction, and the notices were also filed against the property with the city recorder.

Three of the prostitution convictions occurred on days Kotts operated the sauna, and one conviction occurred on Magnuson's day. Neither Fisher, Olson, Magnuson, or Kotts took any action in response to the conviction notices. However, after this nuisance action was commenced, the owners brought a motion to evict Kotts under Minn. Stat. § 617.85. No motion was brought to rescind Magnuson's lease.[1]

By order dated February 24, 1993, the trial court determined that a public nuisance existed at 117 North Washington. Pursuant to the

---

[1] After the trial court issued a temporary injunction ordering Yoshiko's Sauna to cease business, the sauna changed its name to "M's Health Club" and remained open for business. The trial court found M's Health Club "appears to be the same business under a new name."

abatement provision of Minn. Stat. § 617.83, the court ordered the portion of the building containing Yoshiko's closed for one year. The court permanently enjoined the defendants from operating or allowing the operation of Yoshiko's Sauna, or any other sauna, massage parlor, rap parlor," escort service, modeling service, outcall service, or similar business offering sexually oriented services at 117 Washington Avenue North. Appeal is from this order.

ISSUES

I. Was the evidence sufficient to support the trial court's conclusion that the portion of the building housing Yoshiko's Sauna is a public nuisance?

II. Is Minnesota's Public Nuisance Law unconstitutional on its face?

III. Does Minnesota's Public Nuisance Law violate appellants' due process rights?

IV. Does Minnesota's Public Nuisance Law violate appellants' associational rights?

V. Does Minnesota's Public Nuisance Thaw violate federal constitutional proscriptions against taking private property with- out just compensation?

VI. Does the trial court's permanent injunction unreasonably restrict appellants' use of their property?

DISCUSSION

Minn. Stat. § 617.80-87 (1992) essentially creates a statutory cause of action for abatement of particular activities that the legislature has defined as public nuisances. Minn. Stat. § 617.81, subd. 2(a), provides in pertinent part:

> A public nuisance exists upon proof of three or more misdemeanor convictions or two or more convictions, of which at least one is a gross misdemeanor or felony, within the previous two years for:
>
> (1) acts of prostitution or prostitution-related offenses committed within the building.

Subdivision 3 of section 617.81 requires that notice of a conviction be mailed by the court administrator to the owner of the building where the offense was committed and to all other interested parties. It further requires that the notice be filed with the county recorder.

Section 617.82 permits a city attorney, county attorney, or the attorney general to seek a temporary injunction to enjoin conduct creating a public nuisance. Section 617.83 requires a court, upon

proof of a nuisance as defined in the statute, to issue a permanent injunction and abatement order. The injunction must describe the conduct to be enjoined. Id. The abatement order must direct the closing of the building, or part of it, for one year. Id.

There are two ways an abatement order can be avoided. First, under section 617.85, if the conduct resulting in the abatement order involved the acts of a tenant or lessee, the owner of the property can terminate the lease and thus avoid, or have vacated, the abatement order. Alternatively, under section 617.87, the court can release the subject property if the owner posts a bond, not to exceed $50,000, conditioned on the abatement of the nuisance for one year. The owner is then subject to forfeiture under the bond of $1,000 for each day that he or she knowingly permits conduct that resulted in the abatement order to occur during the one-year release period.

I

Appellants argue that the evidence was insufficient to support the trial court's nuisance determination. Specifically, they advance two propositions. First, they contend that because there was only one prostitution conviction during Magnuson's tenancy, it does not meet the statutory requirement of two convictions, at least one of which is a

gross misdemeanor. We disagree.

As mentioned above, both Magnuson's and Kotts' leases conveyed an undivided one-half interest in the premises. Either Magnuson or Kotts could have insisted upon occupying the premises on all days of the week. In addition, their sharing of utility bills, one phone number, and representation to the public that Yoshiko's was a single business entity support the trial court's determination that only one business existed and the alternating-days arrangement was simply for convenience. As the trial court stated, it would exalt form over substance to divide the business into two separate enterprises or tenancies for purposes of the public nuisance statute. Thus, we believe the alternating-days agreement is an arrangement without legal significance.

Moreover, allowing appellants to prevail on their two businesses" claim could lead to absurd results. Establishments permitting prostitution could structure their real estate holdings so there would be multiple tenants, thus requiring the city to obtain numerous convictions to obtain an abatement order for a single building. Such an artifice defeats the legislative purpose of the statute. See Minn. Stat. § 645.17 (in ascertaining the intent of the legislature, courts

should avoid absurd results).

Second, appellants maintain they complied with the statute because the owners evicted Suzy Kotts and therefore should not have been subjected to the abatement order. We disagree.

The relevant part of Minn. Stat. § 617.85 provides:

> Upon a finding by the court that the tenant or lessee has maintained or conducted a nuisance in any portion of the building under the control of the tenant or lessee, the court shall order cancellation of the lease or tenancy and grant restitution of the premises to the owner. The court must not order abatement of the premises if the court:
>
> (a) upon the motion of the building owner cancels a lease or tenancy and grants restitution of that portion of the premises to the owner; and
>
> (b) further finds that the acts constituting the nuisance as defined in section 617.81, subdivision 2, were committed in a portion of the building under the control of the tenant or lessee whose lease or tenancy had been canceled pursuant to this section.

Under the leases, both Kotts and Magnuson had a one-half

undivided interest in the premises. Given the trial court's finding of joint control of the premises, the owners failed to comply with the statute by not evicting both Magnuson and Kotts. Thus, we conclude the evidence was sufficient to support a nuisance determination and an abatement order was justified. We next consider the constitutional issues raised.

II

Appellants claim that Minn. Stat. §§ 617.80-. 87 is unconstitutional on its face because it violates both their due process and freedom of association rights. To prevail on a facial attack, the plaintiff must demonstrate that the challenged law either (1) "could never be applied in a valid manner," or (2) even though it may be validly applied to the plaintiff and others, it nevertheless is so overbroad that it 'may inhibit the constitutionally protected speech of third parties.' New York State Club Ass'n v. City of New York, 487 U.S. 1, 12, 108 5. Ct. 2225, 2233 (1988) (quoting City Council of Los Angeles v. TaxSavers for Vincent, 466 U.S. 789, 798, 104 S.Ct. 2118, 2125 (1984)).

The federal courts have rejected a facial challenge to Minn. Stat. §§ 617.80- .87 on both due process and freedom of association

grounds. Hvamstad v. Suhler, 727 F. Supp. 511, 519 (D. Minn. 1989), aff'd., 915 F.2d 1218 (8th Cir. 1990). Because both the Federal District Court and the Eighth Circuit Court of Appeals determined, as a matter of federal constitutional law, that Minn. Stat. §§ 617.80- .87 does not, on its face, violate due process and freedom of association rights, such a determination is binding on this court when reviewing appellants' federal constitutional claims. See Cooper v. Aaron, 358 U.S. 1, 18, 78 S.Ct. 1401, 1409 (1958) (the federal judiciary is supreme in exposition of the law of the Constitution); see generally Lawrence H. Tribe, American Constitutional Law § 3-4 at 32-36 (2d ed. 1988) . Consequently, appellants' facial constitutional challenges must fail.

We next consider appellants' claim that, as applied in this instance, Minnesota's Public Nuisance Law violates their due process and associational rights.

III

At a minimum, the due process clause requires that deprivation of life, liberty, or property by adjudication be preceded by notice and opportunity for a hearing appropriate to the nature of the case. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313, 70

5. Ct. 652, 656-57 (1950) . In Hvamstad, concluding that Minn. Stat. § 617.80-87 did not violate procedural due process, the Federal District Court noted:

> Under the statute, landowners receive both notice and an opportunity to be heard. Section 617.82 provides that no injunction can be issued without a prior show cause notice of hearing to the landowner and an opportunity for the landowner to be heard. Section 617.83 further provides that upon proof of a nuisance as defined in the statute, the court shall issue a permanent injunction and enter an order of abatement. Thus, it is clear that the statute requires a hearing where the landowner has an opportunity to prove that there were no alleged convictions for crimes described in the statute and occurring on the owner's property. Such a hearing satisfies due process requirements.

Hvamstad, 727 F. Supp. at 519.

In this case, the trial court specifically found that appellants received notices of all the convictions. We also note appellants had a hearing at which they were allowed to challenge whether the convictions occurred on their property. We therefore conclude there

were no procedural due process violations.

Appellants also contend Minn. Stat. §§ 617.80-87, as applied in this case, violates their substantive due process rights. In particular, they maintain the abatement law denies them due process because it binds them to prostitution convictions without an opportunity to appear and challenge the underlying facts of those convictions. In other words, they claim to be bound by judgments to which they were not parties. An identical argument was raised and rejected in Hvamstad. The Eighth Circuit noted:

> Hence, it is no longer the acts themselves that are the nuisance; the successive convictions are the nuisance. * * * Those owners who do not abate the criminal activity, and instead allow it to continue on their premises despite notice of convictions therefrom, then face a judicial determination of nuisance and abatement based on the convictions, not the acts.

Hvamstad, 915 F.2d at 1220. Similarly, appellants are not held accountable for the acts which occurred on their premises but, rather, for their failure to respond appropriately to the notices of prostitution convictions.

Appellants attempt to distinguish Hvamstad by claiming the two

undivided property interests require that they be treated as separate entities. In particular, Magnuson contends that, because only one conviction occurred on her "day," the court's order is unconstitutional. See id. ("[i]f the statute permitted abatement on evidence of a single conviction with no opportunity for the property owner to deny the underlying act or first to eliminate the illegal act himself, the law would likely neither be reasonable nor constitutional").

The trial court specifically found that both Magnuson and Kotts ran Yoshiko's Sauna. The court's finding is supported by the evidence and therefore not clearly erroneous. City of Minnetonka v. Carlson, 298 N.W.2d 763, 766 (Minn. 1980) . Appellants' contention that the statute, as applied, violates substantive due process lacks merit.

IV

Appellants also allege Minnesota's Public Nuisance Law violates their freedom of association. They maintain Yoshiko's Sauna is being closed not for their own conduct but, rather, solely for their association with others who engage in wrongful conduct. Appellants' argument misconstrues the nature of the statute. Minn. Stat. §§ 617.80-87 is a public health regulation. It does not regulate with whom an individual associates. Appellants may associate with

prostitutes and not be accountable under this statute. It is tolerance of successive prostitution convictions for actions performed on their property that violates the statute. Accordingly, we conclude appellants' associational rights have not been violated.

We find appellants' Fifth Amendment taking claim equally unpersuasive. Appellants contend that under Lucas v. South Carolina Coastal Council, ___ U.S. ___, 112 5. Ct. 2886 (1992), they are entitled to compensation for the one-year "taking" of a portion of their building at 117 North Washington Avenue. We believe appellants' reliance on Lucas is misplaced. The Lucas court held:

> When the owner of real property has been called upon to sacrifice all economically beneficial uses in the name of the common good, that is to leave his property economically idle, he has suffered a taking.

Id. at ___, 112 S.Ct. at 2895 (emphasis in original).

Because appellants are still able to rent the residential apartments at 117 North Washington, they have not lost all economically beneficial uses of their property. See id. at ___, 112 S.Ct. at 2895 n.8 ("It is true that in at least some cases the landowner with 95% loss will get nothing, while the landowner with total loss will recover in

full") (emphasis in original)

Moreover, because of the temporary nature of the alleged taking, we conclude appellants cannot avail themselves of the Lucas rule. In Woodbury Place Partners v. City of Woodbury, 492 N.W.2d 258 (Minn. App. 1992), pet. for rev. denied (Minn. Jan. 15, 1993), cert. denied, __ U.S. __ (1993), property owners brought an action against the city, alleging an unconstitutional taking arising out of a two-year moratorium on development. Rejecting the property owners' argument that Lucas required they be compensated for the - taking, this court noted:

> To invoke the total takings analysis of Lucas, the partnership relies exclusively on the stipulation that the moratorium denied all economically viable use of the property from March 23, 1988 to March 23, 1990. We interpret the phrase "all economically viable use for two years" as significantly different from "all economically viable use" as applied in Lucas.

Id. at 261. When measured against the value of the property as a whole, the two-year moratorium did not deny the partnership "all economically viable use of its property." Id. at 262. Likewise, the one-year abatement period of a portion of appellants' building did not

constitute a taking requiring compensation under the Fifth Amendment.

VI

Appellants also argue the trial court erred by permanently enjoining them from operating or allowing the operation of "any other sauna, massage parlor, rap parlor, escort service, modeling service, outcall service, or similar business offering sexually oriented services" at 117 North Washington. Appellants contend these are legitimate businesses and, after the one-year abatement period, they should be allowed to operate their building in any lawful manner.

We believe appellants misconstrue the nature of the trial court's order. The phrase "sexually oriented services" modifies all the aforementioned specified businesses. In other words, two things must be established to find a violation of the injunction: (1) that the business being operated is one of the proscribed businesses or one otherwise known to facilitate prostitution; and (2) that the business offers sexually oriented services. Because any legitimate business which does not offer sexually oriented services can be operated at 117 North Washington Avenue after the one-year abatement period, we conclude the injunction does not unreasonably

restrict appellants' use of their property.

DECISION

The evidence is sufficient to support the trial court's decision that appellants' property constituted a public nuisance. Minnesota's Public Nuisance Law does not, on its face or as applied, violate constitutionally protected due process and associational rights. The trial court's abatement order does not constitute a taking requiring compensation under the Fifth Amendment. Finally, we hold that the trial court's order does not unreasonably restrict appellants' use of their property.

Affirmed.

STATE OF MINNESOTA

SUPREME COURT

93-637 and C3-93-655

City of Minneapolis,

Respondent,

Hubert H. Humphrey, III, Attorney

General, State of Minnesota,

Respondent,

vs.

Helen Fisher, et al.,

Appellants (C 1-93-637),

Respondents (C3-93-655),

Myong Magnuson d/b/a Yoshiko's Sauna,

Respondent (C 1-93-637),

Appellant (C3-93-655),

Suzy Kotts d/b/a Yoshiko's Sauna,

Respondent.

ORDER

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the petition of Myong Magnuson for further review be, and the same is, denied.

Dated: September 30, 1993

BY THE COURT:

_____

Chief Justice

AMENDMENT [I.]

Freedom of religion, speech and press; peaceful assemblage; petition of grievances

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT XIV

§ 1. Citizenship rights not to be abridged by states

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction and equal protection of the laws.

617.80. Definitions

Subdivision 1. Generally. The definitions in this section apply to sections 617.80 to **617.87.**

Subd. 2. Building. "Building" means a structure suitable for human shelter, a commercial structure that is maintained for business activities that involve human occupation, or any portion of such structures.

Subd. 3. Movable property. "Movable property" means furniture and Fixtures.

Subd. 4. Prostitution. "Prostitution" or "prostitution related offenses" means the conduct defined in sections 609.821 to 609.324.

Subd. 5. Gambling. "Gambling" or "gambling related offenses" means the conduct described in sections 609.75 to 609.762.

Subd. 6. Disorderly house. "Disorderly house" has the meaning assigned to it in section 609.33.

617.82. Temporary order

Whenever a city attorney, county attorney, or the attorney general has cause to believe that a nuisance described in section 617.81, subdivision 2, exists within the jurisdiction the attorney serves, that

attorney may by verified petition seek a temporary injunction district court in the county in which the alleged public nuisance exists. No temporary injunction may be issued without a prior show cause notice of hearing to the respondent named in the petition and an opportunity for the respondents to be heard. Upon proof of a nuisance described in section 617.81, subdivision 2, the court shall issue a temporary: injunction. Any temporary injunction issued must describe the conduct to be enjoined

Laws 1987. c. 283 8

617.83 Injunction; order of abatement -

Upon proof of a nuisance described in section 617.81, subdivision 2, the court shall issue a permanent injunction and enter an order of abatement The permanent injunction must describe the conduct permanently enjoined. The order of abatement must direct the closing of the building or a portion of it for one year, except as otherwise provided in section 617.84 or 617.85, unless sooner released pursuant to section 617.87. Before a abatement order is enforced against a building or portion of it, the owner must be served with the abatement order and a notice of the right to file a motion under section 617.851 the same manner that a summons is served under the rules of civil procedure. A copy of the abatement order shall also be posted in a conspicuous place on the building or affected portion. Laws 1987, e. 283, § 4.

617.84. Movable property

The order of abatement may direct the removal of movable property used in conducting or maintaining the nuisance and direct the sale of property belonging to a respondent who was notified or appeared. The sale shall be conducted pursuant to the provisions of chapter 550 on the sale of property on execution. A person appointed by the court as receiver of the building may use a building or portion of it which is the subject of an abatement order in a manner approved by the court. Costs of the sale on execution, moving and storage fees, and any receivership must be paid out of the receipts from the sale of the movable property or any rents collected during the receivership. The balance from the sale of movable property must be paid to the owner of the property. The balance from any rents collected during any receivership shall be paid to the treasury of the unit of government which brought the abatement action.

Laws 1987, c. 283, Section 5.

617.85. Nuisance; motion to cancel lease

Where an abatement of a nuisance is sought and the circumstances that are the basis for the requested abatement involved the acts of a commercial or residential tenant or

lessee of part or all of a building, the owner of the building that is subject to the abatement proceeding may file before the court that has jurisdiction over the abatement proceeding a motion to cancel the lease or otherwise secure restitution of the premises from the tenant or lessee who has maintained or conducted the nuisance. In addition to the grounds provided in chapter 566, the maintaining or conducting of a nuisance as defined in section 617.81, subdivision 2, by a tenant or lessee, is an additional ground authorized by law for seeking the cancellation of a lease or the restitution of the premises. It is no defense to a motion under this section by the owner that the lease or other agreement controlling the tenancy or leasehold does not provide for eviction or cancellation of the lease upon the ground provided in this section.

Upon a finding by the court that the tenant or lessee has maintained or conducted a nuisance in any portion of the building under the control of the tenant or lessee; the court shall order cancellation of the lease or tenancy and grant restitution of the premises to the owner. The court must not order abatement of the premises if the court:

(a) upon the motion of the building owner cancels a lease or

tenancy and grants restitution of that portion of the premises to the owner; and

(b) further finds that the acts constituting the nuisance as defined in section 617.81, subdivision 2, were committed in a portion of the building under the control of the tenant or lessee whose lease or tenancy has been canceled pursuant to this section.

Laws 1987, c. 283, § 6.

617.86. Contempt

Whoever violates a temporary injunction, permanent injunction, or abatement order granted under sections 617.80 to 617.87 may be adjudged in contempt of court.

Laws 1987 c. 283, § 7

617.87. Release of property

If, after an order of abatement has been entered, the owner appears and pays the costs of the action and files a bond in an amount determined by the court, but not to exceed $50,000, conditioned that the owner will immediately abate the nuisance for a period of one year, the court may, if satisfied of the owner's good faith, order the release of the building or portion of it which is subject to the order of abatement. If the premises are released, for each day

during the term of the bond that the owner knowingly permits any part of the premises to be used for any activity which was the basis of the abatement order, the owner shall forfeit $1,000 under the bond. Forfeiture under the bond does not relieve the owner from prosecution for contempt. Release of the property pursuant to this section does not release it from an injunction issued under section 617.83 or any other judgment penalty, lien, or liability to which it may be subject by law.

Laws 1987, c. 283, Section 8.